

Montana Local Food Choice Act Guidance

May 22, 2023

PURPOSE

The purpose of this document is to provide guidance to local health authorities and other interested parties about the Montana Local Food Choice Act, Mont. Code Ann. §§ 50-49-201, et. seq. (MLFCA).

BACKGROUND

The MLFCA is a law which exempts producers who sell specific homemade food products from licensing, certification, packaging, labeling, and inspection. These exemptions only apply to producers who sell homemade food products in conformance with the law. These requirements include the following:

- Transactions of homemade foods must be between a producer and an informed end consumer.
- Transactions must occur only within the state of Montana and cannot take place across state lines.
- Transactions must only be for home consumption or consumption at a traditional community event (farmer's markets, weddings, funerals, potlucks, etc.).

Mont. Code Ann. § 50-49-203.

Food entrepreneurs often have goals to maximize marketing opportunities and revenue for their business, obtaining a retail food license, wholesale food license or both will highly increase access to local, national, and international markets.

DEFINITIONS (Mont. Code Ann. § 50-49-202)

"Homemade" means food or a food product that is prepared in a private home that is not licensed, permitted, certified, packaged, labeled, or inspected per any official regulations.

"Informed End Consumer" means a person who is the last person to purchase a product, does not resell the product and has been informed that the product is not licensed, permitted, certified, packaged, labeled, or inspected per any official regulations.

"Producer" means a person who harvests, produces, or prepares a product that may be consumed as homemade food or a homemade food product. The term includes a person operating a small dairy.

"Traditional Community Event" means an event at which people gather as part of a community for the benefit of those gathering or for the benefit of the community, including but not limited to a wedding, funeral, church or religious social, school event, farmer's market, potluck, neighborhood gathering or club meeting or social; or youth or adult outdoor club or sporting event.

Frequently Asked Questions

Ingredients

Q. Are some food ingredients riskier than others in possibly making people ill or causing death?

- A. *Yes, ingredients that require refrigeration or cooking pose a greater risk of causing illness. Improper storage and packaging may also pose a risk for illness. It is highly recommended that food safety procedures are followed during preparation, cooking, storage and transportation.*

Q. Who will be held financially liable if there is a public health issue with food being sold under MLFCA?

- A. *It depends on the specific facts associated with the outbreak of food born illness, but the producer/person making the food products could face civil liability if individuals become ill from consuming the products, regardless of the type of products being made.*

Q. What meat products are allowed under MLFCA; how is meat defined?

- A. *We recommend following [Montana Department of Livestock's MLFCA guidance document](#).*

Q. Does MLFCA allow for homemade alcohol products, alcohol infused products (rum filled candies), THC and CBD infused products, etc.?

- A. *MLFCA does not modify laws regulating alcohol and marijuana. The sale of rum-filled candy is prohibited under liquor control statutes and Department of Revenue (DOR) regulations.. The same analysis applies for home production of beer or wine in that MLFCA does not alter the application of existing alcohol control laws.*

A similar analysis applies with THC. The Montana Marijuana Regulation and Taxation Act, Mont. Code Ann. §§ 16-12-101, et. seq, requires a person who produces marijuana infused products to be licensed..

The addition of CBD to a food product constitutes adulteration under the Montana Food, Drug, and Cosmetic Act. However, the MLFCA specifically provides that producers of homemade food products are not subject to the requirements of the Montana Food, Drug, and Cosmetic Act or the Department's food additive rules. Therefore, the Department does not regulatory oversight over homemade food and products sold in conformance with the requirements of MLFCA that contain CBD.

Q. Does MLFCA allow for the sale of dietary supplements?

- A. *MLFCA applies only to the sale of homemade food and homemade food products sold by producers in conformance with the requirements of the bill. If an item is marketed as a drug, it will continue to be regulated as a drug.*

Q. Are products allowed to make health claims (cold and flu remedy, cancer treatment, immunity boost, etc.)?

- A. *No, health claims cannot be on made on labels, advertisements, social media, verbally, etc.*

Rules and Regulations

Q. How does MLFCA effect Farmer's Markets?

Montana law generally restricts a person from selling potentially hazardous food at a farmer's market without a retail food establishment license. Mont. Code Ann. § 50-50-121. The MLFCA allows the sale of homemade food and homemade food products by producers at any traditional community event. The MLFCA also provides that persons who meet the definition of a producer and sell homemade food or products in conformance with the requirements of the Act are by definition not a retail food establishment or subject to imposition of food licensure requirements by a state agency or political subdivision of the state. If a person seeking to sell homemade food or products at a farmer's market does so in conformance with the requirements of MLFCA, they are exempt from any state requirement to obtain a retail food license, even if the homemade food constitutes as potentially hazardous.

However, nothing under the MLFCA prevents privately operated Farmer's Markets from electing to impose more stringent requirements. Therefore, privately operated Farmer's Markets can require producers and vendors to obtain a license, registration, or permit from the local health authority as a condition of selling potentially hazardous food at the market.

Persons who do not meet the definition of a producer or otherwise fail to conform with the requirements of MLFCA are not exempt from licensure and must follow the requirements of section 50-50-121, MCA.

Q. What qualifies as informing the consumer?

- A. Producers are required to inform the end consumer that the homemade food products have not been licensed, permitted, certified, packaged, labeled, or inspected under any official regulations. Mont. Code Ann. § 50-49-203.*

Q. Can I bring my food products to my retail store or another retail location (restaurant, coffee shop, school, clothing boutique, etc.) to sell?

- A. No, if you want to sell products at retail locations, you must obtain a wholesale food license through your local health authority. The MLFCA only allows for sale directly between the producer and informed end consumer. Additionally, products sold under the Act must only be for home consumption or consumption at a traditional community event. Mont. Code Ann. § 50-49-203.*

Q. Can producers set up a stand or vehicle on the side of the road to sell their products?

- A. No, in order to sell products outside of their home, the producer must be tied to a traditional community event.*

Q. Can producers deliver products to the end consumer?

A. Yes, as long as the sale was pre-arranged.

Q. Can I bring ingredients and assemble them at the Farmer's Market or Traditional Community Event?

A. No, all products made under MLFCA must be prepared in a private home kitchen. No food preparation is allowed outside of the private home kitchen. Licensing such as a retail food license or temporary permit is required for any offsite preparation.

Q. What should I do if someone is selling products that are not in compliance with this law?

A. It may depend on the type of products being sold. For products containing meat and poultry, contact the local county sanitarian or [Montana Department of Livestock](#). For products containing alcohol and/or drugs, contact [Montana Department of Revenue](#). Please contact the local county sanitarian for all other products, you may find each county's contact information [here](#).